

ORIGINAL

BEFORE THE ARIZONA CORPORATION



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COMMISSIONERS

Arizona Corporation Commission

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF)
TUCSON ELECTRIC POWER COMPANY)
FOR THE ESTABLISHMENT OF JUST AND)
REASONABLE RATES AND CHARGES)
DESIGNED TO REALIZE A REASONABLE)
RATE OF RETURN ON THE FAIR VALUE OF
THE PROPERTIES OF TUCSON ELECTRIC
POWER COMPANY DEVOTED TO ITS
OPERATIONS THROUGHOUT THE STATE
OF ARIZONA AND FOR RELATED
APPROVALS.

DOCKET NO. E-01933A-15-0322

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JUN 24 2016

ARIZONA CORP COMMISSION
400 W. CONGRESS - STE 218
TUCSON, AZ 85701

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS 2016 RENEWABLE
ENERGY STANDARD AND TARIFF
IMPLEMENTATION PLAN.

DOCKET NO. E-01933A-15-0239

NOBLE AMERICAS ENERGY
SOLUTIONS, LLC REPLY BRIEF

I. INTRODUCTION.

Noble Americas Energy Solutions, LLC ("Noble Solutions") originally was not an intervenor in the Commission's proceeding that was established to consider Tucson Electric Power Company's ("TEP") 2016 Renewable Energy Standard Implementation Plan ("REST Plan"), which has been docketed as Docket No. E-01933A-15-0239. However, on December 29, 2015, Noble Solutions was granted intervenor status in the Commission's proceeding that was established to consider TEP's 2015 Rate Increase Application ("Rate Case"), which has been docketed as Docket No. E-01933A-15-0322. Thereafter, by a Procedural Order dated April 6,

1 2016, the Commission consolidated the REST Plan and the Rate Case proceedings. As a
2 consequence, Noble Solutions now has intervenor status in the consolidated proceedings. It is on
3 the basis of that status that Noble Solutions submits this Reply Brief.

4
5 In this Reply Brief, Noble Solutions does not intend to address the questions of (i) whether TEP's
6 proposed expansion of its current TORS Program and proposed new RCS should be approved, and,
7 (ii) if so, what rate(s) should be established in connection with such approval(s). Noble Solutions
8 does not have a position on the merits of either of those issues as of this point in time. Rather, in
9 this Reply Brief, Noble Solutions addresses as a policy matter whether the Commission should be
10 addressing and resolving either issue at this juncture within the context of the aforementioned
11 consolidated proceeding. In that regard, it is Noble Solution's position that the Commission
12 should not.

13 14 **II. DISCUSSION.**

15 In its June 10, 2016 Initial Post Hearing Brief, TEP makes the following observations and
16 statements in support of its arguments that its proposed TORS Program expansion and proposed
17 new RCS should be approved: "These proposed programs will expand customer choice and
18 promote competition..." thereby "...retaining competitive power prices ..." [page 1, lines 12-13
19 and 16, respectively] "Fundamentally, this case is about customer choice ..." and "Customers
20 should have the choice to select the offering that best suits them." [page 2, lines 3 and 12-13,
21 respectively] "...indeed, 'improving customer choice is procompetitive'" [page 3, lines 15-16,
22 citation omitted]

23
24 In connection with the foregoing, the irony of TEP making these observations and statements in
25 support of its TORS and RCS proposals in the very same consolidated proceeding in which it is
26 opposing a "buy-through" program for large commercial and industrial customers on its system,
27 which would offer these very same "customer choice" and "competitive power price"

1 opportunities to those customers, must be noted! More importantly, the regulatory policy
2 implications associated with the concepts of "customer choice" and "competitive power price"
3 opportunities underscore the fact that resolution of the aforementioned question as to whether the
4 proposed TORS Program expansion and proposed new RCS should be approved is not appropriate
5 for a determination by the Commission at this juncture in the instant consolidated proceeding. To
6 the contrary, the "customer choice" and "competitive power price" policy concepts underlying
7 such a determination and whether or not approval would be in the "public interest" are the same as
8 those presented to the Commission with the question of whether or not a "buy-through" program
9 should be approved for TEP's system. In that regard, the evidentiary record on that latter question
10 is in the initial stages of development through the filing of prepared testimony, with several more
11 rounds of filings and a hearing yet to occur in this consolidated proceeding.

12
13 In addition, and with respect to the public policy concepts of "customer choice" and "competitive
14 power prices" as the same pertain to the provision of electric generation service in Arizona, Noble
15 Solutions takes issue with the seeming contention of the Commission Staff in its June 10, 2016
16 Opening Brief that the public policy declaration set forth in A.R.S.40-202(B) has been mooted or
17 emasculated by reason of the Phelps Dodge decision and the absence of any subsequent
18 rulemaking activity by the Commission to address certain defects in the Commission's Retail
19 Electric Competition Rules (Rules) identified by the Arizona Court of Appeals in that decision. To
20 the contrary, Noble Solutions believes that (i) the Commission has the ability to address and avoid
21 those defects through the manner in which it (a) conducts proceedings, (b) renders findings of fact
22 and conclusions of law and (c) prescribes related compliance conditions in individual applicant-
23 specific proceedings and decisions, without the necessity of further rulemaking, and (ii)
24 competition for the provision of electric generation service can occur in effect at the retail level in
25 forms other than the specific form contemplated by the Rules.

26
27 **III. CONCLUSION.**
28

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1 Based upon the foregoing discussion, Noble Solution submits that the appropriate course
2 of action is for the Administrative Law Judge assigned to the instant consolidated proceeding to
3 issue an order providing that a decision on the questions of (i) whether TEP's proposed TORS
4 Program expansion and proposed new RCS should be approved, and, (ii) if so, what rate(s)
5 therefor are to be established, should be deferred until a final decision is rendered in TEP's Rate
6 Case as a whole.

7
8
9 Dated this 23rd day of June, 2016.

10 Lawrence V. Robertson Jr.

11 
12 Attorney for Noble Americas Energy Solutions, LLC

13
14 ORIGINAL and thirteen (13) copies
15 of the foregoing will be filed the 24th
16 day of June 2016 with Docket Control
17 through the Commissions Tucson
18 offices.

19 Copies of the foregoing will be
20 emailed that same day to the
21 Commission's Hearing Division and
22 to all parties of record.
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